

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON FINANCE AND CLAIMS

Call to Order: By **CHAIRMAN TOM ZOOK**, on April 15, 2003 at 8:00 A.M., in Room 317 Capitol.

ROLL CALL

Members Present:

Sen. Tom Zook, Chairman (R)
Sen. Bill Tash, Vice Chairman (R)
Sen. Keith Bales (R)
Sen. Gregory D. Barkus (R)
Sen. Edward Butcher (R)
Sen. John Cobb (R)
Sen. Mike Cooney (D)
Sen. John Esp (R)
Sen. Royal Johnson (R)
Sen. Bob Keenan (R)
Sen. Rick Laible (R)
Sen. Bea McCarthy (D)
Sen. Linda Nelson (D)
Sen. Trudi Schmidt (D)
Sen. Debbie Shea (D)
Sen. Corey Stapleton (R)
Sen. Emily Stonington (D)
Sen. Jon Tester (D)
Sen. Joseph (Joe) Tropila (D)

Members Excused: None.

Members Absent: None.

Staff Present: Prudence Gildroy, Committee Secretary
Taryn Purdy, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 741, 3/24/2003; HB 735,
3/26/2003; HB 756, 3/29/2003; HB
736, 3/24/2003; HB 295, 3/29/2003

Executive Action: HB 489; HB 736; HB 741; HB 705; HB 743; HB 735; HB 727; HB 608; HB 659; HB 295; SB 483; HB 756; HB 206; HB 276; HB 628

HEARING ON HB 741

Sponsor: REP. MONICA LINDEEN, HD 7, Huntley

Proponents: Karl Ohs, Lieutenant Governor

Opponents: None

Opening Statement by Sponsor:

REP. MONICA LINDEEN, HD 7, Huntley, opened on HB 741, which would statutorily establish the **Consensus Council** in the **Department of Administration**. The council was created by Executive Order in September of 1993, under former **Governor Marc Racicot**. For the past nine years, they have been attached to the office of the Governor for administrative purposes. The council has been governed by a board of directors, appointed by the Governor, and staffed by a full time executive director, two half-time project coordinators, and a handful of consultants. During recent years, the council's annual budget has been \$250,000, including \$50,000 from the general fund, \$75,000 in grants, and \$125,000 in fees for service. Since it's creation, the council has established itself as one of the primary resources for collaborative problem solving in Montana. It has helped citizens and officials resolve a number of controversial public policy issues, and has produced many well received publications and training seminars. The council has earned regional and national attention, and is frequently called upon as a resource to western legislators, land management agencies, other states, planners, and other decision makers throughout the west. The **Consensus Council** has continued to re-evaluate how effective it can be, and how best they can continue to serve the state, while preserving it's credibility. The board looked at where they could be attached, such as the **University System, State Library**, and also the **Department of Administration**.

Proponents' Testimony:

Karl Ohs, Lieutenant Governor, supported the bill. As a former legislator, he had the opportunity to work with the **Consensus Council** on a number of issues, and found it to be an effective way to solve policy issues. This process does not work for every issue, but can be effective in solving issues where there seems to be no resolution. He referred to the reputation of the

council, and related an example. This idea is starting to gain attention around the country, and **Congressman Dennis Rehburg** is proposing a national consensus council. His strong feeling about the **Consensus Council** comes from his observation that when people who may be traditional opponents of an idea or policy sit around the table and try to work to find resolution, something happens when they begin to understand other peoples position. He urged support for the bill.

Opponents' Testimony: None.

Informational Witnesses:

Matthew McKinney, Director, Consensus Council, offered to answer questions.

Questions from Committee Members and Responses:

SEN. ROYAL JOHNSON said he agreed with the value of the **Consensus Council**. He didn't think it should be with the **Department of Administration** rather than the Governor's office, because it seemed to him when looking for consensus, it can be achieved on the strength of the Governor's office. He thought moving the council would weaken the force they have.

Lieutenant Governor Ohs said for the consensus process to work, it needs to be perceived as near non-political as possible. The board felt over the long term, it would be best to find a home where that wouldn't be a danger.

Mr. McKinney advised the bill in it's current form, tries to sustain a certain level of visibility, credibility, and legitimacy by having the Governor, as well as the Legislature, appoint members to the Board of Directors. Having the organization actually created by statute gives it more credibility as well. He thought **SEN. JOHNSON'S** point was an excellent one.

SEN. JOHNSON asked if there were any members of the legislature on the committee currently.

Mr. McKinney advised they currently have a thirteen member board, with two legislators, **SEN. BOB KEENAN** and **REP. MONICA LINDEEN**.

SEN. MIKE COONEY said they discussed this in subcommittee and struggled with it for quite some time. In the end, the consideration was to remove it from the Governor's office. Whether it was partisan or not, the perception would at least be

removed. Other consensus councils in existence were not attached to partisan offices.

SEN. TRUDY SCHMIDT asked if there are thirteen members on the council right now, and if it is now being reduced to eight. **Mr. McKinney** said that is correct. **SEN. SCHMIDT** asked if there would now be four legislators. **Mr. McKinney** advised they tried to maximize the flexibility as to how the appointments to the board were made. Four of the eight appointments will be made by the Governor, and one each by the President of the Senate and Speaker of the House, and each minority leader. The people appointed by the legislators do not have to be legislators. They could be, and he felt some legislators should be on the board. The operative provision is in 3(a), which talks about the board representing a diversity of viewpoints.

SEN. SCHMIDT asked why they went from thirteen to eight, an even number.

Mr. McKinney said it a matter of convenience and efficiency.

SEN. KEITH BALES asked about the two-year term, and the possibility that is too short. He asked why they didn't have staggered terms.

Mr. McKinney advised the thinking was they currently operate on a two-year cycle. The bill does not contemplate term limits, so individuals can serve more than one two-year term.

SEN. LINDA NELSON asked how many cases they work with a year.

Mr. McKinney stated between 10-15 different cases. Recently, they were called in to do an assessment to see if there was any possibility of convening a multi-party negotiation in Billings with the public school issue. Sometimes projects are confined to a month or two, but one current project is a four-year project.

SEN. NELSON asked if the total board gets together on every one of these.

Mr. McKinney explained the board serves as a trustee of the organization. The board itself does not pick and choose which issues are addressed, nor do they pass judgement on any sort of outcomes negotiated by various parties. They serve in a trustee capacity to maintain the sense of impartiality, objectivity, and credibility of the organization. They make sure the staff is doing it's job.

SEN. NELSON asked about the criteria to get on the docket.

Mr. McKinney said a party calls, and assessments are done to determine if the players are willing to come to the table. They try to design the right process to lead to a meaningful negotiation, discussion, and resolution. A case getting on the docket is determined by the willingness of the stakeholders.

SEN. NELSON asked if there is a fee for service.

Mr. McKinney said yes. Some cases are pro bono. Currently in **HB 2**, they have no general fund support, and will be relying more on grants and fees.

SEN. NELSON asked if they reject some cases that ask for assistance.

Mr. McKinney advised if a conversation is not inclusive of various stakeholders, they would be inclined to say that conversation is not ripe for discussion.

SEN. BILL TASH asked if the fees included consulting fees.

Mr. McKinney said they charge a fee for their services if they don't have grant monies that cover the costs for a particular project. If the situation is ripe, and they need fees for service, they negotiate an appropriate fee with the client.

SEN. TASH asked about ranking.

Mr. McKinney said most of the time they over-commit, but rely on consultants in the private sector to meet needs.

CHAIRMAN TOM ZOOK asked who decides what issues are addressed.

Mr. McKinney advised it is a staff decision driven by the various stakeholders and participants. If the various parties in Billings are not of a common mind that they want to sit down and use the council as a resource to solve those problems, the council would pull out of the project and be available down the road.

CHAIRMAN ZOOK asked who made the first contact there.

Mr. McKinney advised in that case, it was the Superintendent.

CHAIRMAN ZOOK asked if they would be paid by proration, and asked how that is determined.

Mr. McKinney said they would try to calculate how many hours it would take over what period of time and what the real costs are, and then sit down with the client and negotiate a fee.

CHAIRMAN ZOOK asked if this was during the strike, or after.

Mr. McKinney replied it was in the last two months, and was after the strike. The community is slowly trying to put the pieces back together.

SEN. COREY STAPLETON asked if they mailed out a document of findings in the Billings teacher strike. **Mr. McKinney** said yes.

SEN. STAPLETON said statutorily this would be \$500,000 per biennium, and he wondered how outcome could be measured. He wondered why the situation with the school district got worse.

Mr. McKinney said he did not want to give the impression that since their involvement the situation had gotten worse. They were contacted by the Superintendent of Public Schools in Billings, and they did a conflict assessment. They interviewed 50-60 people representing the diversity of viewpoints in the community on that issue. They summarized that in a report.

SEN. STAPLETON asked if they found one side was less ready than the other.

Mr. McKinney advised they summarized the finding in that report and sent the report back to those they interviewed, as well as the community at large. They convened a public forum to discuss the findings. There is a lot of interest in that case going forward, but there are also some limitations and constraints in terms of how quickly. The community is still talking about the possibility of some sort of forum.

SEN. STAPLETON said his question was if one side was less ready than the other.

Mr. McKinney said yes, it appears the board is not ready.

SEN. GREG BARKUS asked **Lieutenant Governor Ohs** about the terms. He thought two year terms might lead to some political perceptions and lack of continuity.

Lieutenant Governor Ohs replied the process seems to working well. They need a diverse group in order for this to work. There is a lot of attention given to the board, but the board is more of a trustee. It does not direct the findings of the council.

Closing by Sponsor:

REP. LINDEEN closed on the bill. She said she has some simple amendments that clarify the purpose and mission. There are some language changes, and there is a change to include the executive director as an exempt position. **EXHIBIT(fcs81a01)** There is really no comparable position in state government, and **Lois Menzies, Legislative Services Division**, brought that to their attention. She reiterated there is no general fund in the bill. They will be funded only through grants and fees. The council has been very successful, and they have a good reputation for being an impartial and neutral third party. She felt the consensus process has a lot of value.

{Tape: 1; Side: B}

HEARING ON HB 735

Sponsor: **REP. STAN FISHER, HD 75, Bigfork**

Proponents: **John McEwen, State Personnel Administrator,
Department of Administration
SEN. CAROLYN SQUIRES, SD 34, Missoula
Tom Schneider, Montana Public Employees
Association
Eric Burke, MEA-MFT**

Opponents: **None**

Opening Statement by Sponsor:

REP. STAN FISHER, HD 75, Bigfork, opened on **HB 735**, which would revise the job registry for state employees whose jobs are eliminated. The Job Registry program was established by statute in 1992. The purpose was to assist state employees who were laid off from a state agency. Under the program, a former employee could register with the **Department of Labor**, where a list of positions with state agencies was kept. It is the responsibility of the department to maintain a list of these openings. The Job Registry program is the unemployment agency for state employees. **HB 745** is a committee bill that would eliminate the program. When the agencies were asked to review programs for which they were responsible, the job registry program was ranked at the bottom by the department. He commended the department for the thorough job they did. Presently only thirteen registrants are looking for reassignment. The budget for the coming biennium was \$16,000 a year, and currently no FTE were assigned by the agency to monitor this program. This program was created by statute,

therefore, a bill must be approved to remove it. He hoped they would concur.

Proponents' Testimony:

John McEwen, State Personnel Administrator, Department of Administration, read from written testimony. **EXHIBIT(fcs81a02)**

SEN. CAROLYN SQUIRES, SD 34, Missoula, said she was the originator of the state employee protection act. It came into being under former **Governor Stan Steven's** administration. It has been fine-tuned in every session since. She was in support of the bill and felt the **Department of Administration** was an appropriate home. She thought it only fair, as the employer, that the state should give state employees this opportunity.

Tom Schneider, Montana Public Employees Association, testified they opposed **HB 735 in House Appropriations** as it was written. Faced with the current budget crisis, and thinking about **Eastmont** as an example, he asked where these people go if they lose their jobs. Many people have years of retirement credit which is simply going to be capped. That cap is something that can't be replaced with other types of employment. They either have to find a job covered by PERS or they are going to lose what they were working for. An employee with 20 years of service is entitled to 28% of salary for retirement. If that employee works five more years, they are entitled to 50%. Those five years are worth 22% of salary. The only way they can replace that is to find a job that's covered. That's what this bill is about. The association met with the **Department of Administration**, and they agreed to carry the RIF registry with some small changes. The bill was amended, and that is the current bill. He hoped they would support the bill.

Eric Burke, MEA-MFT, rose in support of the bill in its current form as amended. They think it is good to try to keep this registry alive. They believe it is not only good for employees, but good for agencies. He asked the committee to consider the language asking agencies to attempt to hire state employees prior to seeking applications from the general public. They feel that language is not restrictive, and does not place an undue burden on agencies.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. JOHN ESP asked **Mr. McEwen** what this is going to cost.

Mr. McEwen said it would cost very little. There would be a little bit of time to set up a folder on the state's intranet, and a little clerical time to post the electronic files to that folder.

SEN. BARKUS said he was confused as to why the registry was being brought back into statute in the amended form.

Mr. McEwen said one important thing the bill does that is in current law is the notice process. That would be time consuming, and that requirement is removed.

SEN. SCHMIDT asked the sponsor if he was now a proponent.

REP. FISHER indicated he had not seen the new bill, but based on the testimony and conversations with the **Department of Administration**, he thought it was a good way of stepping down the program from a budgeted item in the **Department of Labor and Industry** into the **Department of Administration**. There is a small saving of \$32,000 for the biennium, and there would be no general funds used.

SEN. SCHMIDT asked **SEN. SQUIRES** if there is anything else she wanted to say.

SEN. SQUIRES indicated there are other parts to this bill, like the retraining and relocation. The other portion is the retirement aspect. There needs to be somebody to coordinate this activity. Agencies are responsible for paying the **Department of Administration** for retraining and retirement benefits. To eliminate this, the whole focus of the program would be lost. When **Eastmont** closes, there are benefits that need to be administered.

Closing by Sponsor:

REP. FISHER closed on the bill.

HEARING ON HB 756

Sponsor: **REP. CHRISTINE KAUFMANN, HD 53, Helena**

Proponents: **Joe Mazurek, Protect Montana Kids**
Chris Devaney, Protect Montana Kids
Dr. Robert Shepard
Lora Wier, Public Health Nurse, Teton County
Health Department

**Becky Robideaux, Alcohol and Drug Services of
Gallatin County
Elizabeth Andrews
Brian Close, Bozeman
Tom Clinch, Montana School Services Foundation
Aidan Myhre, Montana Comprehensive Health Care
Association
Gail Beckner, Tobacco Use Prevention Educator
Jeri Demme, American Heart Association
Verner Bertelsen, Montana Senior Citizen's
Association
Cliff Christian, American Heart Association
Catherine Dratz, Protect Montana Kids
Sami Butler, Montana Nurses Association
Pat Melby, Montana Medical Association
Mary Williams, Montana AARP
SEN. TRUDY SCHMIDT, SD 21, Great Falls**

**Opponents: Wally Melcher, Montana Association Independent
Disability Services
Chris Volinkaty, Children and Families with
Developmental Disabilities**

Opening Statement by Sponsor:

REP. CHRISTINE KAUFMANN, HD 53, Helena, advised the purpose of the bill is to implement I-146. The voters approved I-146 last November in every legislative district in Montana. They designated 32% of the settlement payments from the tobacco settlement to the **Tobacco Use Prevention Program**. The program is based on best practices as outlined by the Center for Disease Control. It also designates 17% to the **Childrens Health Insurance Program (CHIP)** and **Montana Comprehensive Health Association (MCHA)**. She indicated there had been quite a bit of discussion about voter approved initiatives this session, etc. She understood there have been bills passed that make other use of this money. She wanted to make a case for following the wishes of the voters. She believed they knew what they were doing when they voted to put this money into tobacco use prevention and to help with associated health care costs. Tobacco places a burden on every Montanan in the form of death and disease and increased health care costs to treat tobacco related illnesses. She cited statistics to support her contention. She said the program that was operating in Montana at a basic level two years ago before the program was cut, was very effective. The voters did not like that program being cut, and that was the reason for the initiative. For the next 21

years, the state will be getting about \$30 million a year for the tobacco settlement. The money should be used as originally intended--to prevent disease and death from tobacco use. The program recommended by the CDC is \$9.3 million per year. The most the program has been funded two years previously, was at \$3.5 million. She described the success of the program in the state of Washington. The program was starting to work in Montana. She thought if a comprehensive program was put in place, the state would realize a cost savings. In a similar program in Massachusetts, for every dollar spent on prevention, they save two in associated health care costs. In California, they believe they save 3.6 dollars for every dollar spent on prevention. Montana could save almost \$28 million in health care costs, if they saved three dollars for every dollar spent on prevention. In Montana, about \$216 million is spent every year on health care costs related to tobacco. Of that, \$52 million is Medicaid. She knew there are other important programs, and her bill is not intended to cause those programs to suffer. She urged support for the bill.

Proponents' Testimony:

Joe Mazurek, Protect Montana Kids, said he harbored no illusions this bill would pass at this stage of the session, but felt obligated to bring the bill forward. The bill was originally introduced and requested in hopes the legislature would address the leading cause of premature death and disease in Montana. They had hoped the legislature would follow the legal direction given them. They appreciated the fact that **SEN. JOHN COBB'S** bill has only diverted the money for a two year period. They had hoped to implement a comprehensive tobacco use prevention program that could be sustained over the long term. He said that has to be the objective, if they ever want to succeed. He informed the committee of some statistics. **{Tape: 2; Side: A}** The program they proposed was more in the nature of a Ford Fiesta than a Cadillac. They recognize the authority of the legislature to appropriate funds, and acknowledge the allocation of \$3.2 million per year for the program. He found it gratifying that Montanans have spoken very deliberately twice on how to use these proceeds. In 2000, by 72% of the vote, they established a tobacco trust for the proceeds to be set aside for future health care and tobacco prevention, and I-146 passed by 65% this past year. He felt voters are cognizant of the fiscal condition of the state, and also the impact tobacco causes. They are hopeful the money from the tobacco settlement can ultimately be used on attacking tobacco related illness and disease. They have never asked that another program suffer at the expense of tobacco prevention, they've merely requested that the people's repeated demands for how these dollars be spent be respected. It is their money, and

they have spoken definitively twice. He noted an 18 cent per pack tax increase on cigarettes would fully fund this program. One of his greatest personal frustrations was knowing he and former **Governor Racicot** agreed to the settlement; they wanted to insure this money would be used to attack this problem. They started that process with the hope they would ultimately get where this bill asks, and it would be sustained for the long term. If the tobacco prevention program is not funded, the statistics will get worse. He wished they could pass this bill, and he hoped in future sessions, as economic times improve, this money can be put to the use it was intended for.

Chris Devaney, Protect Montana Kids, testified she is the former program manager of the Montana Tobacco Use Prevention Program. They were directed by a plan, developed by former **Governor Racicot's** advisory council, based on best practice recommendations made by the CDC. The dollars were allocated to communities, Indian Tribes, and schools throughout the state for tobacco prevention efforts. They were also used for statewide education efforts, smoking cessation, prevention training, and program evaluation. Unfortunately, instead of building on a \$7 million investment in this work, the 2001 Legislature slashed funding to just \$500,000, essentially dismantling the program. She described what a portion of the prevention program looked like at the \$3.5 million level, what it looks like now, and what they think Montana could accomplish with funding at the CDC minimum recommendation of \$9.3 million per year. That is the amount envisioned in the bill and I-146. She acknowledged actual programming decisions would be made by the advisory council established under I-146. She advocated coming at the tobacco problem from different angles. They have data from other states about the effectiveness of a comprehensive program.

Dr. Robert Shepard, testified there is no shortage of need in Montana. This bill is to address one important area of need. Cigarette smoking causes 30% of all cancers and in excess of 20% of all heart attacks. He contended the devastation and human toll of tobacco related illness is tremendous, as well as the economic toll. He advised the bill will save money, as the toll of tobacco is reduced. He felt the needs of this program could be met with an 18 cent per pack increase in the tobacco tax. If they were to fund all of the health related costs solely by a tobacco tax, the tax would be \$3.50 a pack. He suggested passing the bill, and adding another 18 cents onto the tax of tobacco to make up for this revenue.

Lora Wier, Public Health Nurse, Teton County Health Department, testified she has been in public health since 1979. She described the Teton County Tobacco Prevention Program, which

lasted one year. This was a performance based program, and she did not get paid or reimbursed unless she did what she said she was going to do in her proposal. As a result of this program, she got a glimpse of what a tobacco prevention program could do. She witnessed what a comprehensive tobacco prevention program could accomplish, and as a result she has become a tobacco prevention advocate.

Becky Robideaux, Alcohol and Drug Services of Gallatin County, advised she is a prevention specialist. She has been in the field of tobacco, alcohol, and adolescent health for over a decade. She summarized what prevention involves, and stressed it is not just hanging up posters. Beyond the health benefits of prevention, the social norm is changing. Environmental laws and policies can set the stage for the social norm. A comprehensive program will really address tobacco use. When there is a strong prevention program that focuses on tobacco and adolescent health, there is a reduction not only in tobacco use, but also in alcohol use and high risk sexual activity. Prevention requires a sustained effort over time to reduce risk factors. She asked for support of the tobacco prevention program at \$9.3 million as the voters requested.

Elizabeth Andrews, testified she is the parent of two teenage girls, and a tobacco use prevention educator. She felt strongly about adequately funding a statewide tobacco use prevention program. Tobacco is the leading cause of preventable disease and death in the state. 29% of high school students use tobacco. She voted for I-146 because she thinks they can make a difference in these statistics with the use of the settlement dollars. Smoking is associated with high risk behaviors among Montana youth. Dollars spent on a comprehensive program will reduce the numbers of children who use tobacco, and will reduce the incidence of other risky behaviors among youth.

Brian Close, Bozeman, testified tobacco is a gateway drug. Other states have taken strong measures for tobacco prevention. He declared the state of Mississippi has fully funded their tobacco prevention program with spectacular results. He felt Montana could do as well as Mississippi. He felt an 18 cents a pack tax increase could get this program going, and is a small price to pay in terms of the other social benefits. As a citizen, he felt the legislature has not been showing sufficient deference to the initiative process, and he respectfully suggested there would be consequences if advocates are not met halfway on this issue. One of the proposals is to fully fund this program by 2005. He suggested that is a reasonable compromise, and fully in keeping with the citizen's wishes.

Tom Clinch, Montana School Services Foundation, said he would not repeat previous testimony, but contended tobacco prevention programs will bring down health care costs. On the floor of the Senate, in discussing a high profile health insurance bill for schools, **SEN. BOB KEENAN** made a comment that health insurance premiums are not going to come down until health care costs come down. **HB 756** is an investment in bringing health insurance premiums down. He asked the committee to please vote for it.

Aidan Myhre, Montana Comprehensive Health Care Association, advised another important component of the bill addresses the funding for the **Montana Comprehensive Health Care Association**. The association was created by the Montana Legislature in 1987 to provide health insurance coverage for high risk individuals. The program was expanded in 1997 to comply with a federal law that provided health insurance for people who were leaving group coverage. The program has grown and evolved dramatically over the last ten years, and it now provides health insurance for over 3000 people in Montana, of every age and in every county in Montana. There is a direct correlation between high risk diseases and tobacco use. She described a pilot program that was started after passage of legislation in 2001, and after receiving a federal grant of \$1.25 million. That pilot program was designed to create a low income subsidy program for the **MCHA**. The people who are insured by **MCHA** pay premium that are typically 135% higher than standard health insurance premiums of a healthy individual. People who were eligible were dropping coverage because they couldn't afford it. They created and implemented this pilot program, and studied it over the last six months. The pilot program is up and running and provides health insurance to about 150 individuals. **{Tape: 2; Side: B}** She encouraged support of the bill in hopes they can continue the pilot program and the health insurance program for high risk individuals.

Gail Beckner, Tobacco Use Prevention Educator, Helena, testified in support of the bill. She advised Helena citizens had been calling her about a bill going through the process. They said they voted on the issue, and felt their vote didn't count. They knew what they were voting for when they voted for clean indoor air, and knew what they were voting for when they voted for tobacco settlement dollars to go back into tobacco prevention programs. She had no argument about supporting other programs, but advocated for the will of the people.

Jeri Demme, American Heart Association, testified she is a retired health and physical education teacher. She was on the former Governor's Advisory Council for Tobacco Use and Prevention. She and **SEN. BEA MCCARTHY** worked very hard on the educational aspect of that. She helped gather signatures for I-

146, and described those who signed. They felt the money needed to go for this, and many were surprised because they thought it would automatically. When her sixth grade health class was dealing with tobacco issues, she was asked by students why she and the government didn't do something about it. She was hopeful for a consensus to do that. She felt there needed to be role models for children. She advocated fully funding I-146 as part of that. Using parts of a comprehensive program does not work; the only way it works is to fully fund it.

Verner Bertelsen, Montana Senior Citizen's Association, advised seniors were involved because of the devastating effects on their peers. They want to do everything they can to protect children, grandchildren, and great grandchildren from the terrible scourge of tobacco. That is why a comprehensive tobacco use prevention program is so desperately needed. The citizens of Montana agreed, and voted for I-146. They realize they cannot establish an appropriation, but realize they can indicate how Montanans would like to see the tobacco funds appropriated. They did not feel the legislature should disregard the will of the people, and rewrite the way the funds should be distributed. They know there are many pressing needs, and felt they should be dealt with, but not at the expense of the tobacco prevention program, or the Child Health Insurance Program. He felt they were so busy treating disease that tobacco use causes, there is no money to spend on prevention. He hoped they would vote to fund I-146.

Cliff Christian, American Heart Association, advised he had been around the halls for awhile. He said he would not condemn any of them for voting with the courage of their convictions, albeit wrong. He said it was a perception problem. He referenced the term "tobacco mafia." He indicated the **Heart Association** takes no government money, and never will. He heard people praising the abstinence program, and those same people condemn the tobacco use prevention folks for using advertising money to do the very same thing. One difference is there is no paid lobbyist running around saying teen pregnancy is a good thing. Secondly, people still don't believe tobacco and second hand smoke kill. Tobacco companies have paid for studies to counter other studies. The average heart dollar taxpayer costs to the state of Montana total between \$52 and \$55 million. The tobacco industry, from all sources, contributes about \$40 million. He advocated increasing the user fee to at least parity, and advised the people would support a tobacco tax of \$1.50. He thought it unfortunate tobacco prevention has been pitted against human services for funding. The option is an 18 cent tobacco tax.

Catherine Dratz, Protect Montana Kids, testified as a concerned voter and one who has been affected by death and disease caused

by tobacco. Both her grandparents smoked, and her grandfather died of emphysema. Other family members have also been affected. She has witnessed the cost of health care, and advocated investing in the future of our youth.

Sami Butler, Montana Nurses Association, advised nurses are the largest group of health care providers in the state, nation, and world. They will continue to advocate for their patients, and the health of people. They stand firm in respecting the voter's decision to fund CHIP, MHA, and tobacco prevention.

Pat Melby, Montana Medical Association, advised they strongly support fully funding I-146. He added it is time for all citizens of Montana who want to rid the state and nation of this scourge of death and disease caused by tobacco, to stand up and be counted.

Mary Williams, Capital City Task Force, Montana AARP, stood in support of the bill.

SEN. TRUDY SCHMIDT, SD 21, Great Falls, advised she was on the Governor's Advisory Council for Tobacco Use and Prevention while she was in the House. They saw the work of this group, how comprehensive it was, and how diligent they were in trying to educate Montanans about prevention and abstinence. Prevention is less expensive than treating the disease. She hoped they would look at funding some part of prevention, so that this group can become involved again in that work.

Opponents' Testimony:

Wally Melcher, Montana Association Independent Disability Services, and Montana Association for Rehabilitation, advised he had also been asked by **Steve Yeakel, Montana Council for Maternal and Child Health**, two of the human resource development councils, and several providers of mental health services to children to stand as an opponent of this bill. This is a difficult situation, and they are standing to oppose the bill, not tobacco prevention. In almost any other situation, they would be proponents. Their opposition of this bill has everything to do with timing and money. There is an unprecedented budget crisis in the state, vital human services are at stake, and several thousand individuals with disabilities are facing severe reductions and possible elimination of the life-sustaining services. Delaying the implementation of I-146 was a key component of the budget planning done by the **Joint Human Services Subcommittee**. They testified in front of this committee in favor of **SB 485**, which would delay the full implementation of I-146. On the floor of the Senate, a few days later, **SEN. KEENAN** and

SEN. COBB amended this bill to prioritize the use of these funds for such programs as prescription drugs for persons with severe mental illness, the MIAMI program for the abatement of infant mortality, and a program for people with severe disabilities. These are times that call for tough decisions, and he encouraged not supporting the bill.

Chris Volinkaty, Children and Families with Developmental Disabilities, rose to oppose the bill and urged them to do a delayed reduction for all the reasons **Mr. Melcher** listed. Some of this money is tied to essential human services programs. They don't oppose prevention in any way, but they believe this is where the money needs to go.

Informational Witnesses:

Gail Gray, Director, DPHHS, requested an amendment to **CHIP**. There are some non-Medicaid related costs that go with it that the **Appropriations Subcommittee** dealt with, but they are not included.

Questions from Committee Members and Responses:

SEN. EMILY STONINGTON advised **SEN. COBB'S** bill, **SB 485**, took about \$6 million each year of the money on lines 3 and 4 on page 2 of the bill. **HB 2** has appropriated \$3.2 million a year for tobacco prevention programs. In addition, tobacco prevention programs will receive \$875,000 a year from the CDC. The intention of the subcommittee was to honor the will of the voters in I-146 as closely as they could, and at the same time recognize there are exceptional needs in this session of the legislature. **SEN. COBB'S** bill sunsets at the end of this biennium. On lines 10 and 11, the subcommittee honored the Executive's proposal. They didn't give the full amount to **CHIP**. They gave \$2.7 million in 2004, and \$2.8 million in 2005, and that is in **HB 2**. On lines 15 and 16, the **MCHA** program, which was stipulated in I-146, did not get funded in **HB 2**. She contended this bill either needs to pass with the money that is remaining to be funded for **MCHA**, which is \$761,058 each of the fiscal years, or that needs to occur in the conference committee for **HB 2** if they are to honor the will of the voters. Otherwise, this sits in a state special revenue account. This is not general fund money, so it does not show up as part of the ending fund balance. It's in the state special revenue account that all of those tobacco settlement proceeds go into. **{Tape: 3; Side: A}** The reason they didn't fund the **CHIP** program to the full amount or **MCHA** for the full amount as stipulated in this bill, was they used some of that money for Medicaid match. They used \$1,358,000 in 2004 and

\$1,286,000 in 2005 for Medicaid match money for Medicaid programs and that is in **HB 2**. That was the Executive's recommendation, and they followed it. If some of these pieces are taken care of at least in part, the choice is to either reverse actions in **HB 2**, or this program in it's entirety. If they follow **HB 2** and the actions of the subcommittee, they still have to fund the **MCHA** program in **HB 2**.

SEN. ESP asked **Ms. Andrews** to provide the committee with copies of the risk survey she quoted. **Ms. Andrews** agreed to do so.

SEN. ESP asked **Mr. Christian** for his observations about the **Lung Association**. He indicated between 2001 and 2002, public support went down 3%. Their requests to the organization went down 33%. The government support for the organization went up 43%. He said apparently, they take government money.

Mr. Christian said he couldn't comment on that, and had no idea. His testimony was that the **Heart Association** never had and never will.

SEN. RICK LAIBLE asked **Ms. Robideaux** about her use of the word "risk factor."

Ms. Robideaux indicated risk factors cluster. When prevention programs are comprehensive and sustainable, risk factors go down. When tobacco use goes down with youth, alcohol use and sexual activity goes down, and sometimes drug abuse. Marihuana can fluctuate on it's own. She works with adolescent health, tobacco reduction, and alcohol reduction. It is a term she uses, and something seen when working with youth.

SEN. LAIBLE asked if there is a direct correlation when tobacco cessation funds are used, there is a program in place, the funding goes up, and then tobacco use goes down; he asked if the inverse if also true.

Ms. Robideaux advised that is correct. In the early 1980s, in Minnesota, there was a program called ASSIST. When that money came in and tobacco prevention increased in the state, the use of tobacco and other risk factors with youth went down. As this money ran out in the late eighties, tobacco use went up. In the mid-nineties, the prevention efforts were again funded and tobacco use went down. The same thing happened in Florida. It needs to be sustained long enough to change the social norm. Strong sustained efforts make sustainable changes.

Closing by Sponsor:

REP. KAUFMANN thanked the committee. She commented she sits on **House Appropriations** and is aware of the tremendous needs. She believed the subcommittee on **Health and Human Services** did a great job of looking at and balancing those needs. She didn't agree they had no choice--these other programs need funding, so therefore this one doesn't get it. There have been significant revenue options presented to both Houses of the Legislature. She believed those should have gone forward, and there should be funding for health and human service needs and funding for this program. She thought there was still a chance to do that if they want to.

HEARING ON HB 736

Sponsor: **REP. ROY BROWN, HD 14, Billings**

Proponents: **Governor Judy Martz
Office of Public Instruction
Steve Meloy, Montana Board of Public Education
Lance Melton, Montana School Boards Association
Dave Puyear, Montana Rural Education Association
Eric Burke, MEA-MFT**

Opponents: **None**

Opening Statement by Sponsor:

REP. ROY BROWN, HD 14, Billings, opened on **HB 736**, an act establishing a K-12 Public School Renewal Commission. He advised the bill has bipartisan support, the support of the Governor, the Board of Public Education, the Office of Public Instruction, MEA-MFT, MQEC, and other school groups. Repeated adjustments, reversions, and court decisions regarding education, governments, and funding make it difficult for educators and parents to understand education in Montana. The renewal commission will look at revenue available for public education, the structure of school district governance, methods of funding public education, the role of state government in public education, and the role of the federal government in public education. The core membership of the commission will be the Governor, the Chair of the Board of Public Education, the Superintendent of Public Instruction, the Speaker of the House, the President of the Senate, the House and Senate Minority leaders, or their designee. The bill contains a \$10,000 appropriation for the start up, and he contended it will do some good things for education. He hoped they would concur.

Proponents' Testimony:

Governor Judy Martz, thanked the legislators for the work they've done for the people of the state of Montana. She rose in strong support of the bill. She thanked legislative leaders for their support. She announced the legislation in her state of the state address. The **Montana Board of Public Education** always works with the best interests of the students in mind. She was honored they will be willing to work with her office, the **Office of Public Instruction**, and the education community to make this commission a reality. She advised this is a bipartisan bill, and a non-partisan necessity. The interests of Montana's schools will be the only interest of each commission member. She felt the need for the commission is obvious. Their goal is to provide hope for Montana students, teachers, parents, and taxpayers. Both parties and all school groups are willing to sit down at the table and find real solutions to make education stronger in Montana. Repeated adjustments, revisions, and court decisions regarding the education governance and funding systems in Montana make it difficult for teachers, educators, and parents to understand education in Montana. A top priority for her administration is to reexamine the school funding formula. Current school funding is a labyrinth that does not allow citizens to explore the budgetary process, and this has to change. They must identify a consistent source of adequate revenue for Montana's schools. Only then can argument around funding be set aside to engage in a true discussion that puts learning first. This commission will also need to address concerns about the ability of Montana's education infrastructure to meet it's constitutional obligation for an effective and efficient system of free quality public elementary and secondary education. Through these and other discussions, she is confident the commission will be able to propose changes and new provisions regarding components of K-12 public education to the 59th session of the legislature. She believes it is better to strengthen the school system, than to rebuild it. The commission will make sure that happens. She said Montana has bright students, involved parents, and highly energetic and dedicated educators. By sticking together and focusing on the future, education will thrive in these difficult times. **Chris Goss**, from her office, has been working with the Lieutenant Governor on education, and will answer questions for the Governor's office. She asked for their bipartisan and unanimous support on **HB 736**.

CHAIRMAN ZOOK advised the **Office of Public Instruction** sent a message that the Superintendent wouldn't be able to be there, but would like to go on record as supporting this bill.

Steve Meloy, Executive Secretary, Montana Board of Public Education, supported **HB 736** on behalf of the full board. The bill was initiated by the board for an imperative need to look at

K-12 funding, governance and structure from a holistic standpoint. Over the years there have been many good studies and advisory councils, which have looked at these issues, making good and great recommendations on specific issues. The board believes it is time to look at the big picture. Late last fall, **REP. STAN FISHER**, and **REP. DON HEDGES** approached the board with some ideas around consolidation issues. What struck him the most about their comments was, why doesn't the education community or the board take some leadership. Last year the board wrote a position paper to suggest a panel of experts be assembled to bring together solutions and thread together, in a holistic manner, research compiled over the years. The board worked closely with the Governor's and the Lieutenant Governor's offices, and this concept was endorsed by the Governor in her state of the state message. They worked cooperatively with the Governor's office and leadership of both Houses of the Legislature. The four concepts recommended by the **Board of Public Education** include adequacy of funding, simplification of the funding system, stability of revenue for education, and efficiency of the delivery system. This session has considered many pieces of legislation, and he had been in committee rooms many times when someone suggested looking at a specific or general issue in the interim. **HB 736** provides that opportunity, and is truly worthy of support, he contended. The \$10,000 will be a good start, and the Governor has indicated an interest in trying to find some money. The board would like to have some solid recommendations come out of this study for the 2005 Legislature.

Lance Melton, Montana School Boards Association, supported the bill. He thought it will be an innovative approach to address a number of different issues, determine how efficient they can get, and find a way to fund public education. His misgiving is the fiscal note. He urged them to consider this commission could craft something they could all agree upon and withstand constitutional scrutiny. School funding needs reform, and there are constitutional obligations to insure it's adequate and equitably distributed. In order to do that, they will need expertise. He urged them to do what they could, rather than leave this to fund-raising efforts during the interim. They spent all of their reserves last interim, and don't have any more to give. They will certainly be there to participate, but it costs significantly more than what is in the bill to get the kind of expert advice needed.

Dave Puyear, Montana Rural Education Association, strongly supports the renewal commission. They have concerns over the financial structure of the bill. Over the past number of years, there have been a number of studies during the interim. If this study is to make a significant difference, it really needs more

than the \$10,000. He felt the \$10,000 is very misleading. This will take substantial resources. There will be schools that will be putting up local resources in getting people to these meetings and participating in this process. This will cost an enormous amount of money, and he asked them to factor that into their considerations. Currently, resources are limited at the local level. Each one of these dollars are dollars away from classrooms and what they can do for students. If this study is implemented, they will participate and those dollars will have to be prioritized in that fashion. They support the study, the vehicle, and the process, but think it needs more funding at the state level. This will take some large expenditures on the part of local districts in a very difficult time for them.

Eric Burke, MEA-MFT, testified they are in support of the bill. He noted the passage of the federal No Child Left Behind Act has created numerous changes for the state of Montana. That alone could merit a study of this sort. There are additional challenges, such as declining enrollment, population changes, the onset of technology and distance learning, and the changing economy and tax structure. These issues need to be talked about in a constructive fashion. They believe the bill will need some additional funding, and they will be working on that. He submitted written testimony from the **Montana Quality Education Coalition**. **EXHIBIT(fcs81a03)**

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. SCHMIDT asked the meaning of the "structure of school district governance."

Chris Goss, Governor's office, advised school district governance will include consolidation issues, the possible regional governance of public education systems, etc.

Closing by Sponsor:

REP. BROWN closed on the bill. He said the Governor understands more funds are needed for this, and she is committed to try to get those funds. School funding doesn't have to be this complicated. He didn't think there are ten people in the entire state that completely understand it, and they need to do something about that. Montana schools are among the best in the world, and they want to try to keep them that way. During the discussions in the House, there were some concerns that sometimes the youth correctional facilities are also involved in public

education. He advised **REP. GARY MATHEWS** had an amendment he wanted the committee to consider.

{Tape: 3; Side: B}

- Recess 10:22 -
- Reconvene 10:55 -

HEARING ON HB 295

Sponsor: REP. LARRY JENT, HD 29, Bozeman

Proponents: Mike Grayson, Anaconda/Deerlodge County Attorney
Ali Bovington, Office of Attorney General

Opponents: None.

Opening Statement by Sponsor:

REP. LARRY JENT, HD 29, Bozeman, opened on **HB 295**, a bill that addresses aggravated DUI--those people who are drunk driving and who have not and will not "get it." The bill proposes to address two classes of those drivers--those with an alcohol concentration of .30 or higher, or those who have been convicted of DUI related negligent homicide or criminal endangerment. There will be **County Attorney Association** amendments to the bill to clean up language. In some jurisdictions they don't want to charge DUI and homicide in the same complaint because of double jeopardy problems. He indicated **Mike Grayson, County Attorney**, will explain those amendments, which he supports. He addressed the second fiscal note. In paragraph #3, it says "this bill as amended eliminates the negligent vehicular assault statute." He asserted it does not. When the bill was originally written, that was in there but was not intended to be there and was stricken by House amendment. He said assumption #4, that the **Montana Highway Patrol** issued 2,499 citations for DUI in 2001, has no basis in fact. **Mr. Grayson** has data from the state laboratory. Assumption #5, that these felons will be sentenced to 30 days in jail, paid for by the MHP, is simply not true. The bill says nothing about sentencing people to 30 days in jail. The bill provides a maximum of five years unless there is serious bodily injury, and a fine of up to \$10,000 in the first instance or up to \$50,000 in the second. The idea that somehow there is a 30 day sentence apparently came out of thin air and has no basis in fact or law. Assumption #6 says "each citation will result in a \$1000 fine for \$125,000 in revenue." He indicated there is no guarantee that each citation will result in a \$1000 fine. There is no minimum for this offense. If they wish to have a minimum for this offense, it is fine with him. The maximum is \$10,000,

and he suggested a district judge that gets someone in on a aggravated DUI will be looking more towards the maximum than the minimum. The legislature can have a high mandatory minimum fine, if there are fiscal concerns. The idea that each citation will result in a \$1000 fine, when there is a \$10,000 maximum has no basis in fact or law. The fine disposition is correct--half to local governments and half to the state general fund. People who drive at .30 are people who are functioning under the influence of alcohol all the time. They are so conditioned to it, when seen on a video, they do well. Driving is a divided attention test; a vehicle cannot be operated with anywhere near that kind of alcohol concentration. That is the scary thing about these heavily intoxicated drivers. They had an interesting debate in **House Appropriations** about this being even lower. He thought there were good reasons to look at a lower figure, but he didn't have empirical data to support that. It is important that for persons able to get to .30 and actually open the door to a car and put the ignition key in, it isn't the first time they've done it; they've had a lot of practice. They're good at it, and have gotten away a number of times. If a person has previously killed somebody in a wreck, and they're drinking and getting in a car, these are people that don't get it.

Proponents' Testimony:

Mike Grayson, Anaconda/Deerlodge County Attorney, supported the bill on behalf of his county and the association. The reasons for another DUI bill is to fill an gap in existing DUI law. He spoke of an individual in Billings who has a first offense DUI after having killed people in 1993 in a drunk driving accident. That is not the only time this has happened. He is aware of three other cases in Anaconda of people that have had a negligent homicide that got behind the wheel and had drunk driving charges again. It doesn't happen a lot, and he didn't think that part of the bill will result in a lot of cost in terms of incarceration. He contended these people need to be off the streets. He submitted a printout from the **Department of Corrections** website on a particular drunk driving case. **EXHIBIT(fcs81a04)** Since getting out of prison, this individual has wracked up four new DUI charges. The fourth was a felony DUI, and the most they could give him under current law, was 13 months to the **Department of Corrections**. He couldn't be charged as a persistent felony offender, because it had been too many years since he got out of prison until he was charged again. He served his ten year sentence, which at the time he was sentenced was the maximum penalty. That is now up to 20 years, and he felt that helps a little. People like this need to be locked up; they can't be changed or rehabilitated. He thought the bill is a conservative, minimal approach. He related another story of a repeat offender.

The other part of the bill deals with a real high blood alcohol level. He cited a study called the "Grand Rapids Study," that has been verified numerous times, that shows above .2, response time and danger behind the wheel increases exponentially. The chance of being involved in a fatal accident goes up. He wouldn't mind seeing the .3 reduced, but the legislature has to balance that against the cost. He was told 1.6% of the people that took a breath test in 2001, tested above .3, and the other 98.4% tested lower. At that level, he thought 40-50 cases would get generated in a year. A number of the most serious drunk drivers won't take the test, and they won't even be caught with this bill. This is not a perfect solution, but is a starting point. He thought it appropriate to consider a mandatory minimum fine. There are already minimums on all other drunk driving offenses. He submitted some technical amendments.

EXHIBIT (fcs81a05) As currently written, the bill requires a negligent homicide conviction be within the last ten years. To him that didn't make sense. On many negligent homicide convictions he's seen, people get ten years in prison. Under this bill, when they get out they can drink and drive again. The amendment would strike the language requiring the negligent homicide to be within ten years. Any negligent homicide that involves drinking and driving, ought to fit in this bill. As currently written, it requires there to be a negligent homicide and DUI conviction rising out of the same transaction. Some counties have done that, but others have not because of concern for double jeopardy. Any negligent homicide that has facts where the driver was driving impaired as part of the underlying offense, would be included in this bill; it would also include criminal endangerment.

Ali Bovington, Office of Attorney General, supported the bill and advised this is an important piece of DUI legislation that addresses the worst of the worst of these offenders.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. LAIBLE asked for the definition of criminal endangerment.

REP. JENT advised criminal endangerment is a separate statute. To be charged, a person has to recklessly put the life and limb of another in peril by something they do. They have to ignore a known risk. Someone can be charged with criminal endangerment if they are in a drunk driving wreck where they seriously injure another person.

SEN. LAIBLE asked if someone is stopped, and they were convicted within the last ten years of drunk driving at .08, is that considered criminal endangerment.

REP. JENT advised that is aggravated DUI. To satisfy this bill, it would have to be over .3 or drunk over .08 and a previous conviction of either criminal endangerment or negligent homicide. It would include someone who had already been in a serious alcohol related wreck.

SEN. LAIBLE said it not the guy who got a DUI nine and a half years ago, and now has another DUI.

REP. JENT said that person is guilty of first offense DUI. The trigger here, is the defendant was in an alcohol related wreck where somebody got killed or seriously injured.

SEN. LAIBLE asked about the amendment.

REP. JENT supported the amendment. He advised it would be better to say "impaired by drugs or alcohol."

SEN. LAIBLE expressed concern about #3, which is "a court may not defer imposition of penalties provided in this section." He wondered how the courts would feel about this statute taking away some flexibility they might have.

REP. JENT advised in Title 46-618, there is a statute on deferred imposition of sentences. There are a number of criminal law violations where the court may not defer imposition of sentence. This amendment makes the bill consistent with all the other DUI statutes.

SEN. ED BUTCHER noticed the bill would eliminate the negligent vehicular assault statute, and then it was added back in.

REP. JENT said he never meant to delete that statute when he asked for the bill draft. On the House floor, that was taken out.

SEN. KEITH BALES asked if he had any idea if the deferred sentence issue would affect the fiscal note.

REP. JENT said he didn't think it would. Generally for serious felonies, there will be some jail time. This bill is about more severe punishment.

SEN. DEBBIE SHEA asked about the difference between aggravated DUI and negligent homicide.

REP. JENT clarified a person commits negligent homicide when they negligently, as defined in the statute, cause the death of another human being.

SEN. DEBBIE SHEA asked if negligent vehicular assault is the same as negligent homicide.

REP. JENT said there are three degrees of homicide. Deliberate homicide is first degree murder. Mitigated homicide means the person intended it, but there were mitigating factors. Negligent homicides in Montana are overwhelmingly, but not exclusively, vehicular related. They are almost always drunk driving related. He had only done one negligent homicide that wasn't vehicular related, and that was a shooting case. If a person is in a vehicle drunk, and they kill someone, that is negligent homicide. The mental state in negligent homicide is not defined well in code. It is outrageous conduct that anyone would know would have a great chance of endangering someone. Drunk driving is presumed to be that kind of conduct.

SEN. SHEA said, as amended, it would eliminate negligent vehicular assault, and put in aggravated.

REP. JENT repeated the bill no longer eliminates the negligent vehicular assault statute. On the last page of the bill, the repealer is taken out. Negligent vehicular assault is a car wreck where someone is hurt by more than just carelessness. That statute remains, and it should remain.

{Tape: 4; Side: A}

SEN. ESP asked about #5 on the fiscal note. He remarked **REP. JENT** testified that was invalid because they are not sentenced to 30 days. He asked if there are a lot of cases where they are housed in a jail pending conviction.

REP. JENT advised yes. If they can't make bail, they're going to be in the county jail. He suggested if he was a district judge and had a guy in front of him that had previously killed somebody and got charged under this statute, he'd probably set a high bail. He thought most district judges would.

SEN. ESP asked if he would agree it could possibly be more than 30 days on these folks prior to trial, conviction, and remand to the **Department of Corrections**.

REP. JENT said it would vary from case to case, but the assumption is wrong it would be 30 days paid for by the **MHP**. These cases will be felonies, and are Corrections matters. It is

not like the **MHP** picking them up on a regular DUI. If this person has this kind of criminal record, and are picked up for DUI, they are going to jail someplace. They are going to be punished under the existing statutes. On fourth offense DUI, they are going to the **Department of Corrections**. It will vary from offender to offender depending on what they've done in the past.

SEN. ESP said under this scenario, it would have been a first time DUI. The county will have those expenses unless the **Department of Corrections** reimburses them upon conviction. He didn't think they do, so there will some expense to the counties.

REP. JENT thought there will be. He didn't think it credible to say there would be no cost associated with creating this new crime. There are incremental costs associated with the cases anyway. The decision is if the incremental costs are worth it to society, and if imposing a minimum fine can offset some of those costs. He thought it could.

SEN. BALES referred to #11 on the fiscal note. **EXHIBIT(fcs81a06)** He asked how there could be no fiscal impact.

REP. JENT said he did not agree with #11, #12, or #13 for the **Department of Corrections**. Since they are not repealing negligent vehicular assault, #11 does not apply. #12 says as amended the bill creates no new felonies, even though all versions of this bill have created new felonies. There is some fiscal impact to **DOC**, because people will be put in jail. The maximum number that can be charged under this bill will be a few dozen a year. There are only a handful of people each year who commit a negligent homicide and get caught doing something else. The .3's are also in the bill. In the real world, there is plea bargaining. He considers this bill a plea bargain tool. This entire second fiscal note is not correct.

SEN. BALES asked how many would be affected because of previous convictions.

REP. JENT advised he has no estimate of that. It is probably half a dozen a year throughout the state.

Mr. Grayson thought that is accurate. Not many offenders have a negligent homicide or felony criminal endangerment DUI related offense on their record. Of that group, the number that re-offends will be small.

SEN. SCHMIDT asked about the technical note #2. She wondered if it happened often where convicted felons were placed in pre-release or on probation.

Mr. Grayson indicated it is an option, and will depend on the person's whole record. If someone had a negligent homicide when they were 18 or 19, and get an aggravated DUI at 35 when they're working and being a productive member of society, he could see a judge looking at an option other than prison. Aggravated DUI doesn't require prison. They could get a pre-release placement, or intensive supervision placement with the **Department of Corrections**, or even straight probation. Of the ten negligent vehicular assault felonies, only five are in the prison system. No one would actually be injured in this offense. It is for drunk driving offense with either a real high blood alcohol content or with prior conviction for real serious DUI.

SEN. LINDA NELSON stated **REP. JENT** found all sorts of holes in the fiscal note. She wondered if he considered doing his own fiscal note so they would have something that looked more accurate.

REP. JENT said he was told by someone in the budget office they were working on a better one, so he didn't feel it was appropriate to do his own. The other note was not forthcoming, but he didn't follow up on it. He had never done his own fiscal note, but he thought this was one where it might be appropriate. The trouble is there are always uncertainties in the criminal justice system. There would be a lot of guessing.

SEN. NELSON commented the committee bases most of their decisions on fiscal notes, so they need something as accurate as possible.

CHAIRMAN ZOOK advised **REP. JENT** to visit with **SEN. COBB** or the fiscal analyst's office.

SEN. ESP asked **Mr. Grayson** about the average length of stay for someone with a felony charge.

Mr. Grayson advised a lot of counties try a felony case within 6-7 months. A plea bargain can often be struck within a month or two. A significant number will post bond. Some of these will be local police cases, and local governments will support pre-conviction detention expense. He hoped that would be offset by the required mandatory minimum fine.

Closing by Sponsor:

REP. JENT closed on the bill. He hoped they would pass the bill because it is a public safety concern. It addresses the most dangerous DUI offenders. He believed the fiscal concerns can be met by the discretion of the district judges, and by whatever amendments this committee might want to make in imposing the minimum fine. He would ask the House to concur in such an amendment. He hoped the committee would concur in the county attorneys' amendments as well.

EXECUTIVE ACTION ON HB 489

CHAIRMAN ZOOK advised **HB 489** bill came off the floor and was heard on the floor. The bill would continue state assumption of civil jury trial costs.

Motion: **SEN. ESP** moved that **HB 489 BE CONCURRED IN.**

Chief Justice Karla Gray, Supreme Court, advised this is a simple bill that changes only one subsection of 35-901. The statute tells what the state assumed, but it didn't assume what has been reimbursable. During the rush at the end of last session on **SB 176**, the state assumption bill, some rather peculiar language was placed in the bill about the extent to which the state was assuming civil jury trial costs. The **District Court Council** construed the language and limited the state's responsibility for civil jury trial costs to counties which happened to have civil jury trials in either fiscal 1998 or fiscal 1999. What they didn't know at that time, is that in excess of 26-36 mostly rural counties did not have any civil jury trials in either of those two years. The bill is intended to have the state assume the costs of civil jury trials in all the counties going forward. A terrible inequity had been created, and the bill is simply a fairness issue. She pointed out the effective date is July 1, 2003. It adds another projected \$300,000 for the biennium in state assumed costs. If they choose to pass the bill, she reminded them the court's shortfall is currently about \$1.8 million and will go up to \$2.1 million as a result of the bill. It would expand the state's responsibility for civil jury trial costs.

CHAIRMAN ZOOK said they are providing money to do that. **Chief Justice Gray** indicated the bill has not been to **House Appropriations**, so no funds have yet been provided. It would have to be amended in **HB 2**.

SEN. BALES asked about the status of **SB 134**.

SEN. ESP indicated it is dead, and has no relevance at this point. **SB 490** attempts to clarify parts of what **SB 134** did, but

it hasn't been scheduled for a hearing. The issue of the bill is one of fairness. Some counties are covered under district court assumption for civil jury trials and some aren't. Some of the counties gave up entitlement funds to fund part of it, and some didn't. This bill doesn't address that, but he thought they could address that in another session. The crux of the issue is it will cost another \$300,000 over the biennium.

SEN. JOE TROPILA asked how many counties qualify for payment of civil jury trial costs in the current fiscal year.

Mary Phippen, Montana Association of Clerks of District Court, advised 19 counties. Not only were counties limited by the fiscal years from being reimbursed, but if those costs were not paid out of the district court budget, they have been denied reimbursement also.

SEN. TROPILA asked how many of those counties have costs in the current fiscal year.

Ms. Phippen referred to a chart from the **Montana Association of Counties (MACO)**. It lists jury and witness fees for fiscal year 2001, and civil jury expenses. Of the 21 counties that had civil jury trial expenses that year, four counties that were eliminated had jury trial expenses. **EXHIBIT(fcs81a07)**

SEN. TROPILA said in **HB 124**, all the money goes into a certain pot. He asked if they get reimbursed from that.

Ms. Phippen said her understanding is under **HB 124**, the calculation toward the entitlement payments was based on those two fiscal years. That money was to be transferred to the state for reimbursement.

SEN. TROPILA asked if there is any money left in that pot.

Ms. Phippen indicated in FY 2001, according to **Harold Blattie's (MACO)** calculations on the handout, there was \$106,578 in civil jury witness and trial fees. There are also expenses listed for expert witness fees. Those are combined with civil and jury, and she didn't know how much of that money was combined. 100% of civil jury and witness fees for FY 2001 was \$106,578.

SEN. TROPILA asked how much was collected toward this. He wondered if there is any money left in the pot to pay the bills.

Chief Justice Gray advised she has tried to stay as far away from **HB 124** and that pot as she possibly could.

SEN. LAIBLE asked **SEN. ESP** to clarify the New Section on page 3. He thought if **SB 490** passes, this bill will not be necessary.

Chief Justice Gray suggested the new section of coordination instruction can and should be stricken from the bill. At one point in the procedure with the **Subcommittee on District Court Assumption**, a version of **SB 134** had picked up the amended language that is now in **HB 489**. {Tape: 4; Side: B} **SB 490** does not contain this language. This item was left as a stand alone in this bill. This bill needs to pass if they want to expand the state's responsibility to civil jury trial costs. It is now not related to **SB 490** as that bill is progressing through the chambers.

SEN. LAIBLE asked how they would know these costs were not already picked up in **SB 134** or **SB 490**.

SEN. ESP said the Chief Justice is correct. As **SB 490** is now, it has Section 3 (h) as it was originally written. If they want to do this, they either have to amend **SB 490** or pass this bill. This bill is just about this issue. They thought rather than muddying up **SB 490** in addition to the other issues, they would leave it here. This bill is about including the other counties, and picking up the cost in future bienniums. He recommended doing this, and then looking at some way to include the costs for those other counties in the entitlement share back to the court in another bill.

CHAIRMAN ZOOK asked if they have to strike the coordination instruction, or if it automatically falls.

Taryn Purdy, Legislative Fiscal Division, indicated it would automatically fall. It would be cleaner to strike it. It's not necessary to amend it if they don't want it to go back to the House.

Vote: Motion carried unanimously.

- Recess 11:55 a.m. -
- Reconvene 2:30 p.m. -

EXECUTIVE ACTION ON HB 736

Motion: **SEN. LAIBLE** moved that **HB 736** BE CONCURRED IN.

CHAIRMAN ZOOK advised the amendment is at the request of **Gary Matthews**. The reason for it is schools in the **Department of Corrections**, at Pine Hills for example.

Motion/Vote: SEN. TROPILA moved that HB073602.ACE BE ADOPTED.
EXHIBIT(fcs81a08) Motion carried unanimously.

Discussion:

SEN. BUTCHER commented on commissions. They all know how far \$10,000 for 25 people is going to go. Everybody feels good about setting up commissions, but there doesn't seem to be a lot coming out of these commissions. If they do come out with any serious changes, the whole lobby will be up here to kill it. He questioned authorizing one more commission. He realized the Governor would like to have something like this again to say she came up with something. He didn't know what would be gained by putting together another 25 member commission.

CHAIRMAN ZOOK said he understood what **SEN. BUTCHER** was saying. There have been a lot of these through the years. It's nice to see on this one both parties are in favor of this along with the Governor. Because they haven't accomplished some of things they'd like to have in the past, it doesn't mean they shouldn't keep trying. He realized it's only \$10,000, and if somebody wanted to change that somewhere else along the way, that's fine with him too. He thought if people really want to do something worthwhile, it could be done on a small amount of money. If the people involved are really interested, he thought they would make it happen. He acknowledged the point there are a lot of studies collecting dust on shelves.

SEN. BARKUS asked about the role of the **Board of Public Education**.

CHAIRMAN ZOOK said maybe this would help them define their goal better, and hopefully give them some direction. The basic problem is the funding, and how complicated it is. It was developed over ten years ago, and a lot of work was put into it by some very good minds.

SEN. ESP said the concept may have some merit. They talked about it in the **Education Subcommittee**. In order to come up with something that will actually be bought into by most Montanans, regular people would have to be included. It looks like they may have figured out a way to do that. If they don't broaden the base to include ordinary taxpayers, they will never get to the bottom of what's going on. He hoped that's where they were headed with this, and that is why he is going to support it.

CHAIRMAN ZOOK declared he stirred his brother up, who is a teacher. A book came out about reinventing government that said something about education. The book said in revamping education,

you don't want educators on the committee to do that. There are some involved here.

SEN. NELSON said they had a study group as recently as the last session. The Governor appointed a task force on education, and they brought their results to the **Education and Local Government Interim Committee**. The recommendations were taken all over the state, and very little has come in the session as a result of that study.

CHAIRMAN ZOOK agreed she was right about that.

SEN. STONINGTON said they all have those stories. She was on a the subcommittee that looked at higher education in this last session, and they came up with accountability standards, etc. She thought not one person on that committee would remember one thing they did.

SEN. LAIBLE said he would support this. He remembered supporting a resolution study last session. In testimony **Steve Meloy, Board of Public Education**, talked about looking at standards. They won't just look at the surface. He felt having a Governor's commission might make the difference. For \$10,000, he wondered what they were worrying about. They probably waste more than that on stamps.

SEN. ROYAL JOHNSON advised he would oppose this. He thought they made progress in higher education. That report went to the subcommittee on education. Some people would like to make that a separate interim committee, and he didn't want to do that. They referred it back to the interim education committee again, and they can do what they need to do about it. He thought all this could be done without this bill. If the Governor thinks this is needed, he wondered why she doesn't appoint somebody. She did that last time, and they don't have anything from that commission. He thought if they truly want to do something for public education, they ought to fund the **Board of Public Education** with another \$50,000 and let them do this and report back. He didn't think this bill does anything at all, and he didn't see how it would accomplish everything. It would be a nice pat on the back for people who would serve on it.

Vote: Motion carried 12-7 with **BUTCHER, COBB, JOHNSON, MCCARTHY, NELSON, SCHMIDT, and STONINGTON** voting no.

EXECUTIVE ACTION ON HB 741

Motion: **SEN. LAIBLE** moved that HB 741 BE CONCURRED IN.

SEN. ESP asked if there is money in **HB 2** for this. **CHAIRMAN ZOOK** said that was his understanding.

SEN. LAIBLE said the intent of sending this to the **Department of Administration** is so they can become self sustaining. **CHAIRMAN ZOOK** said it would be financed through fees and grants.

SEN. MCCARTHY indicated they used them with the EQC, and had to pay. The grants and fees pay salaries and expenses. When they do something such as with the community of Billings, they bill the community for what they do.

SEN. ESP said in testimony, it was grants, fees, and general fund.

Ms. Purdy said for many years there was general fund in there. When the **Consensus Council** first started, they were expected to be self-supporting. All general fund has been removed.

CHAIRMAN ZOOK said he didn't think they would be allowed to exist if they were still general fund.

SEN. JOHNSON referred to testimony about taking the political nature out of the situation. He questioned how the members would be appointed--four by the Governor, two members by the House, and two by the Senate. He didn't think it would take politics out of it; he thought it would be more political than it is. He thinks the council works reasonably well, and he hoped they would leave it that way.

SEN. LAIBLE said he understood that concern, and they had that discussion in subcommittee. The Governor's office felt it would be a better match and more appropriate in state administration since it was proprietary funding. He was not sure about the structure currently, and unless something is done so they can become self supporting, it will continue to be a drain on the general fund. There is no incentive to do it otherwise. This would create the impetus to have that agency be self-supporting.

SEN. JOHNSON said the situation is one where someone should have control. He felt there was no one better than the Governor to have control. If someone is trying to settle a disagreement, the name of the Governor's office will have more clout than the **Department of Administration**. He thought that's why they had the Economic Development office in the Governor's office.

SEN. KEENAN advised he had been on the board of the **Consensus Council** for the last four years. The board is currently fully appointed by the Governor. It has a very diverse membership, and

is not political at all. **REP. MONICA LINDEEN** came onto the board the previous year, and **SEN. KEENAN** took former **REP. KARL OHS'S** place four years ago.

SEN. MCCARTHY said some good people have been on the board over the past few years. She asked if the membership needs to be changed.

SEN. KEENAN said no. The placement for the **Consensus Council** needs to change. The membership solely appointed by the Governor works just fine. He thought former **Governor Racicot** probably fell over backwards when **Matt McKenney** recommended **SEN. KEENAN**, because in 1995 and 1997, he tried to put the **Consensus Council** out of business. He worked with **DPHHS** and mental health issues, etc., and contended they are never going to get anywhere with mental health, but would never have gotten as far as they've gotten without the support and help of the **Consensus Council**. Originally, the focus of the council was contentious natural resource issues. The first foray into something other than natural resources, was with the Mental Health Advisory Council. They have since gone into Fish, Wildlife, and Parks, etc. The problem they have with their budget, is agencies will use their services and don't want to pay for them. Three free conference committees ago, then they put \$100,000 general fund one-time-only restricted into the council to get matches and money from the Hewlett Foundation. The concern they have is their foundation money is on the decline. With grant money, they always look to see if the council has credibility in state government, and if the legislature believes in them enough to put the money up to match those kinds of funds. He said he would support this, even though the makeup of the board is working now.

SEN. LAIBLE indicated he supports this, and this is the only way to make this a full fledged service of state government.

{Tape: 5; Side: A}

Motion: **SEN. ESP** moved TO CONCEPTUALLY AMEND HB 741 so line 23 reads "The board consists of eight members appointed by the Governor." The rest pertaining to that is struck.

SEN. ESP explained the amendment would strike everything after line 23, and continue to have the members appointed by the Governor. He thought that would allow for a broader spectrum of people on the board.

SEN. SCHMIDT asked **SEN. KEENAN** his opinion about the change from thirteen members to eight.

SEN. KEENAN thought eight would be fine as long as they do the work the board seems to do currently. He said there is no voting with consensus. The **Consensus Council** has been involved with the drafting of the bill, and he was sure they were fine with eight. Thirteen involves more expense.

SEN. BARKUS felt the mix and makeup of the board in the bill is excellent.

Vote/: Motion failed on a voice vote.

SEN. KEENAN remarked when he put money into this in free conference committee, it was put up or shut-up. He said the response was interesting. He contended they do great work at facilitating conflict. He learned that Helena, the legislature, and politics in general thrive on the tyranny of a one-vote majority. Hardly anybody wants to do consensus. He thought that is a real shame, but it's reality.

SEN. BARKUS advised he served on the **General Government Subcommittee** and they spent a fair amount of time on this. He said he would appreciate it if the committee would support the work of the subcommittee.

Vote: Motion carried 17-2 with **BUTCHER** and **JOHNSON** voting no.

EXECUTIVE ACTION ON HB 705

Motion: **SEN. COBB** moved that HB 705 BE CONCURRED IN.

SEN. COBB advised this is the provider tax on nursing home beds. This is similar to the one on hospitals.

Vote: Motion carried unanimously.

EXECUTIVE ACTION ON HB 743

Motion: **SEN. ESP** moved that HB 743 BE CONCURRED IN.

SEN. ESP said this is the same theory as the last bill. It would include the mental health nursing care center in the bed tax.

SEN. LAIBLE remarked he was always in favor of Enron type financing for health care.

Vote: Motion carried unanimously.

EXECUTIVE ACTION ON HB 735

CHAIRMAN ZOOK said this was the job registry bill of **REP. FISHER**. This is a subcommittee request.

Motion: **SEN. JOHNSON** moved that HB 735 BE CONCURRED IN.

Discussion:

SEN. COONEY said they are looking at the possibility of state employees losing their jobs. He thought it important to keep this service in place. The **Department of Administration** proposal would be much less expensive, but would allow state employees that may possibly be RIF'd to have access to the market. As a former agency director he utilized this service when looking for employees, and it saved time and trouble when they could find employees who previously worked for state government. He thought this is a reasonable solution to the issue, and he hoped the committee would support it.

Vote: Motion carried unanimously.

EXECUTIVE ACTION ON HB 727

Motion: **SEN. BARKUS** moved that HB 727 BE CONCURRED IN.

Motion: **SEN. BALES** moved that HB072701.AGP BE ADOPTED.

EXHIBIT(fcs81a09)

SEN. BALES advised this is the bill to close **Eastmont**. There was a long hearing, and this was a subcommittee bill. There is much consternation in Glendive about the closing of this facility. He thinks it is a good facility, but there are various things happening. He would like to see it open. There is a technical correction to the amendment. It should say **DPHHS** instead of **Department of Corrections**. If there is not sufficient money in **HB 2** for severance pay and costs of reduction in force, the contingency fund in **HB 13** will be used. It was unknown the amount of money it will take to keep the caliber of employees there that need to be there until all the patients are gone.

Discussion:

SEN. STONINGTON asked the department to review this, because they had done extensive planning with regard to severance pay and how it would be downsized.

Gail from **DPHHS** said when they looked at severance packages, they went back to what was done in the past for state employees. At the state hospital they had a severance package of about \$5000

per person in 1999. Typically, state employees don't get severance packages.

SEN. STONINGTON asked how they planned for the numbers of people, and if there was adequate funding for staff until the last patient left.

Gail said in working with the facility, they designed the staff they would need. Some people would be released early in July, and then it would be a gradual thing until the end of November, when the last patients would be moved out and the facility would close down. In working with the staff and the information they provided to her, they went for the \$5000 per person. The total amount they allocated was \$480,000 for the severance package. They understood the union would have negotiations with the **Department of Administration** on who would get what percentage of that. They looked at the amount of people anticipated to take early retirement and those who would move to other state jobs, and used the remainder multiplied by \$5000 to get the \$480,000.

SEN. STONINGTON asked **SEN. BALES** if his concern is that is inadequate.

SEN. BALES replied the director thought it might be as high as \$800,000 to retain some of the people she needed. He was not certain it would go that high, but there will be union negotiations. This is a contingency if additional money is needed.

SEN. COBB said this doesn't hurt anything. He asked **Director Swysgood** to comment.

Director Chuck Swysgood, Office of Budget and Program Planning, advised all agencies have access to a contingency fund. This is at his discretion because he has more requests for that money than he has money. He has to be prudent in how he allocates that. There is no guarantee they will receive all they request. He tries to spread it out as much as possible. As long as the amendment is not taking that right up front, and not jeopardizing other agencies, he had no problem with it. He didn't think the amendment was needed, because they have access to that already.

Vote: Motion carried unanimously.

Motion: **SEN. BALES** moved that HB072702.AGP BE ADOPTED.
EXHIBIT (fcs81a10)

SEN. BALES said the department has indicated they were going to build two group homes in Glendive, and the amendment clarifies

that the next two group homes will be built in a community in Montana in which a residential facility has been closed.

SEN. KEENAN asked **Gail Gray, DPHHS**, if this is a harmless amendment and this is already in the works.

Ms. Gray indicated it is already in the works, and they have no problem with the amendment.

SEN. JON TESTER asked what happens down the line.

Mr. Gray said people will still be there in those group homes. Ten people will be moved from **Eastmont** and **MDC** to the community, and they are proposing all ten of those go to the Glendive community.

SEN. TESTER asked if the developmentally disabled group is growing in size. Down the line they might have people in other communities that need to go to a group home. He asked if the group home would have to be built in Glendive.

Ms. Gray said they are moving to afford ability of choice. They elected to go to four person group homes because they could be used for other purposes other than a group home. They feel more people will need independent living etc. They won't need as many group homes, but will need more living facilities.

SEN. JOHNSON said there is no date prescribed in the amendment. He wondered if the amendment applies to anyplace in eastern Montana.

SEN. BALES said this is for additional group homes.

SEN. COBB said the only bug in this thing is this is forever.

CHAIRMAN ZOOK noted it says right in the amendment a community in eastern Montana in which a residential facility is closed.

SEN. BALES thought it should be designated as the next two group homes being built.

Ms. Purdy advised Section 5 of the bill would not codified and will be gone in two years anyway.

Vote: Motion carried 18-1 with BUTCHER voting no.

SEN. MCCARTHY read a letter to the committee in support of the closing of **Eastmont**. The closing would save funding for those

that can be served and will be served in a community setting in the future.

Motion: SEN. KEENAN moved that HB 727 BE CONCURRED IN AS AMENDED.

Discussion:

SEN. SCHMIDT asked to question someone representing **Eastmont** or who would know about **Eastmont's** clients. *{Tape: 5; Side: A}* She asked **Joe Mathews, Disability Services Division**, if some people would go into group homes.
{Tape: 5; Side: B}

Mr. Mathews indicated there are 29 people in \$10,000 for 25 people who are near total care or total care. There is always a debate in the developmental disability community about least restrictive environment for people. If they had their way, they would move more people to the community, but they feel this is a step forward in the lawsuit. They believe there are ten people in the facilities that could easily be served in the community in group homes. They don't think that's a problem. It's trying to figure out which ten. The others would move to **MDC** and hopefully in the next go round there will be more people moving out. Group homes in the communities have really improved. There are medical services there, and essentially the same services can be provided as in residential facilities.

SEN. SCHMIDT said there is some concern about these residents being near sexual predators.

Mr. Mathews said they are in a totally separate building. It is a place where there have been people before who have gone to the community. Now there is an opening there, and it is totally separated from any predators or those with violent behavior problems. That has to be done by regulation.

SEN. NELSON said she heard there is something like 14 lawsuits pending against Boulder.

Mr. Mathews said there are no lawsuits pending. They just had a federal "look behind." It is done by the centers for Medicare and Medicaid. Whenever they come in, the facility is given a corrective action. The federal look behind only happens about once every five or six years. There is a quality assurance division review every year in all the facilities. They have a list from the look behind. It has to do with Medicaid regulations more than anything else, and is more of an audit.

SEN. BALES commented that he thinks **Eastmont** has done a superior job. The people of Glendive are wondering why **Eastmont** is being closed, and **MDC** is staying open. It seems to the people of eastern Montana that most government facilities are in western Montana, and this is closing one of the few things they do have in eastern Montana. He realized more people are moving into community homes. He commended the department for placing two of the community homes in Glendive, and hoped that comes to fruition. He thought there are some people that will not be suited to live in community homes. There is a need for some centralized facilities. This is a time of lawsuits and uncertainty, and he hopes they don't close this and need to build or reopen one in the future. If that happens, Glendive's concerns will be well founded and justified. He would like to see **Eastmont** remain open. He thinks it was a very good facility and served a very good purpose.

CHAIRMAN ZOOK said he couldn't disagree with that. He was in there several times, and it's a well run facility. It's hard for him to picture the folks he saw there out in a group home, but he had never been in a group home. He was sure the members that signed onto this bill are caring people. He will support it, but it is a big loss for Glendive. **Eastmont** is a major employer there. The one opportunity is that something else can develop there, which may provide a number of jobs.

SEN. COONEY stated he also had the privilege of visiting **Eastmont**, and said it is a wonderful facility. The staff is extraordinarily dedicated. He said this is tough vote for him to make, because he has such high regard for the community and those that work at that facility. It seemed to him, this move in inevitable. He hoped they could find a use for the facility.

SEN. MCCARTHY said they heard in testimony the AWARE group was looking at facilities in eastern Montana. She said they have done a quality job with group homes in other areas of the state. It is not easy for any of them to vote on this.

Vote: Motion carried 14-5 with **BALES, NELSON, SHEA, TESTER, and TROPILA** voting no.

EXECUTIVE ACTION ON HB 608

Motion: **SEN. KEENAN** moved that HB 608 BE INDEFINITELY POSTPONED.

Discussion:

SEN. COONEY asked **SEN. KEENAN** to give his thoughts on this.

SEN. KEENAN said the office of Indian Affairs downstairs in the Governor's office can accomplish what this bill wants to accomplish. He felt this is a job bill. Someone interested in this particular position is identified in the bill. The Governor traveled to all the Indian Reservations. He thought it a little much to ask the Executive Branch in statute to meet quarterly with the Tribes. That is defining the overall duties of the Governor. He felt there is no quid pro quo. There is a one-way responsibility for the state.

SEN. TESTER said the president makes some good points, but he felt there was a point that can't be overlooked. Almost every Native American Representative or Senator is on the bill. He felt it needs to be a two-way street, but these folk feel strongly about communication between the state and tribal governments. These people are players. If this will help get lines of communications open, it is a relatively small step. The tribes represent a significant portion of the population. If this was just signed by **REP. JONATHAN WINDY BOY**, and nobody else, maybe it deserves to be indefinitely postponed. He stated support for the bill.

SEN. KEENAN didn't think there is much substance to this. He is trying to do everything he can to help the Crow Nation with their vision, and he is comfortable making this type of motion. It is a sensitive area, but they have broken new ground in this legislature. He felt the legislature has done and will continue to do a lot to try to build those relationships and communication.

SEN. COONEY said he would resist this motion. There is an office of Indian Affairs in the Governor's office, but that office has not had a coordinator and he didn't know when they would have a coordinator. He sat through a meeting one morning, and heard concerns about what they are attempting to do with this bill. It isn't asking that much, and there are issues that need to be dealt with. He hoped they could extend their hands and express through this legislation their interest in working with Native Americans and the different tribal governments in the state.

SEN. BALES said the impression he got from the hearing was this is promoted more by people around here than the Tribes. He thought it was brought out in the hearing that it was not the Tribes. The Tribes have not come to the state and asked for this. They don't have any assurances the tribes want to do this at this point. He thought before they consider this, the Tribes ought to make it known they want this. He didn't think that's been done yet. He thought this is premature and he supported the motion.

SEN. BARKUS spoke in favor of the motion. One of the goals of state government is to be more inclusive of Native Americans. He thought this bill is going the opposite direction. They want to be a part, but they want the government to come to their ground. If they want to participate and be more active in state government, this doesn't go there.

SEN. BUTCHER said for the Legislative Branch to start mandating the Governor's schedule is not the direction they should go. He thought if there is a real need for a meeting, rather than just a few political leaders stirring it around, it would make a difference. This is an area in which the legislature has no business. It should be left to the government to government relationship between the Executive Branch and the Tribal leadership.

CHAIRMAN ZOOK said it is a constitutional question. He didn't think there is any way in the world the Governor could be required to do this. He said he wouldn't attempt to.

SEN. LAIBLE said the title of the bill says "Government to Government relationship between Montana Indian tribes and the state of Montana." In the body of the bill, there are many places that talk about the responsibility of the state agencies, with no reciprocal responsibility from the tribes. He didn't think this is a government to government cooperative effort. He stated support for the motion.

Vote: Motion carried 13-6 with COONEY, NELSON, SCHMIDT, STONINGTON, TESTER, and TROPILA voting no.

EXECUTIVE ACTION ON HB 659

SEN. MCCARTHY said this is in regard to the TANF overpayments. She wanted them to at least discuss it.

Motion: **SEN. SHEA** moved HB 659 BE CONCURRED IN.

SEN. SHEA said the bill is about overpayment to clients on the Peak program. The department admitted it was their error.

CHAIRMAN ZOOK said the only concern is about a sympathetic social worker being involved.

SEN. ESP said under current law, the department is allowed to do this already at their discretion. This would make it mandatory.

SEN. MCCARTHY said if there are some sympathetic social workers out there, God bless them. It's terrible work.

CHAIRMAN ZOOK asked **SEN. ESP** if they are able to do this under current law.

SEN. ESP indicated if due to department or recipient error, a recipient receives public assistance for which the recipient is not eligible, or entitled to receive, it may be returned at the discretion of the department.

CHAIRMAN ZOOK asked if someone from the department wished to speak to this.

Gail Gray, DPHHS advised the issue was related to TANF. With food stamps and Medicaid, even if the department makes a mistake, they don't have any way to forgive it. On TANF they do. Because the fiscal note is so low, they were alright with the bill.

CHAIRMAN ZOOK said it was \$328 dollars in each year of the biennium.

SEN. SHEA asked if the department would absorb this. **Ms. Gray** said they would absorb this.

SEN. BARKUS asked if there is a written department policy regarding this issue. **Ms. Gray** said it is definitely the policy of the department. They don't have a problem with this with regard to TANF. If they make the mistake, they don't want to collect it from people that don't have the money to pay it back.

SEN. BARKUS asked if they have a monitoring system for caseworkers.

Ms. Gray said they do, and this is monitored at all levels. It does occasionally occur. Their biggest concern is people trying to do the right thing will inadvertently cause people to have to repay these that they have no capacity to do so.

CHAIRMAN ZOOK asked if she knew why a bill like this would be brought.

Ms. Gray said it was because of a specific constituent concern they have a lot of empathy for.

SEN. SHEA said the reason **REP. KAUFMAN** brought this forward is because she got a letter just as **SEN. SHEA** did. There are no procedures in place. Each case is considered separately. There was concern about paying this back when it was the department's fault.

SEN. ESP said under current law it's at the department's discretion, and under the proposed change they will have to forgive errors on their part. It is a policy change.

SEN. SHEA withdrew her motion.

{Tape: 6; Side: A}

EXECUTIVE ACTION ON HB 295

Motion: SEN. JOHNSON moved that HB 295 BE CONCURRED IN.

Motion: SEN. JOHNSON moved that HB029501.ATP BE ADOPTED.
EXHIBIT(fcs81a11)

SEN. ESP moved to segregate amendments 1, 2, and 3 for the purposes of discussion.

Motion/Vote: Motion that AMENDMENT #1 BE ADOPTED carried unanimously.

Motion: SEN. JOHNSON moved that AMENDMENT #3 BE ADOPTED.

SEN. ESP thought that language would take away discretion of the court. He thought there is a considerable fiscal impact.

CHAIRMAN ZOOK asked Joe Williams, Department of Corrections, to comment on the fiscal impact.

Mr. Williams submitted information from the department.
EXHIBIT(fcs81a12) This bill had a \$2 million fiscal note at first. It was amended to .30, the Department of Justice ran numbers from the Highway Patrol, and there were 125 people. The numbers before them currently are based on 125 people every year blowing .30. It becomes anywhere from \$1.2 to \$1.5 million per biennium. 70% of those will probably get probation. In most cases, with DUI, there are not many cases pled down or dismissed. Roughly 90% of those 125 are going to get sentenced.

SEN. JOHNSON didn't realize this would cause so many problems. He withdrew his motion.

Motion: SEN. LAIBLE moved that HB 276 BE INDEFINITELY POSTPONED.

Discussion:

SEN. BUTCHER said if individuals being talked about are the real losers or hard core guys. The proponents were advocating these

guys should be locked up and the key thrown away for everybody's safety. It isn't everybody that blows .30 that is going to be swept up in this thing.

Mr. Williams thought that is probably correct. The numbers being talked about represent the hard core. **Director Bill Slaughter** asked him to mention, now that this would be a felony, almost every one of these would refuse to blow. He was not sure if they would gain much with this legislation or not.

SEN. BUTCHER said these are people who have killed somebody in a wreck or something else in the past. They are being turned loose. It's the same thing as somebody walking down the street and blowing away a clerk in a store in a robbery, and he is given a gun again. He thought this may be an issue to take a more in depth look at, rather than blowing it off as costing too much money.

Mr. Williams said he talked to their chief legal counsel and a couple of judges. He believed the statute is available now under criminal endangerment. His concern with the bill was being able to go for a conviction on criminal endangerment plus another conviction on aggravated DUI.

SEN. BUTCHER asked if that is good, considering the kind of individuals being talked about.

Mr. Williams said if that's what they want to do for policy making. It could lengthen the term of incarceration.

SEN. BUTCHER said they are talking about individuals. The proponents think these people need to be left in there.

Mr. Williams asked that his comments on the fiscal note not be misunderstood as pertaining to agreeing or disagreeing with the bill. He said this is a good estimate of what it will cost.

SEN. BUTCHER said this is guys that kill people in their vehicles that are being turned loose with misdemeanors when they are caught again in the same action. He was not sure the money becomes as much of an issue as the kind of individuals being dealt with. He has had several friends killed by drunk drivers that were on their umteenth time. He has real concern, and doesn't care what it costs. He thinks if some of these people are habitual offenders, they need to be locked up and the key thrown away. For them to start over on a first time DUI again because they haven't happened to kill anybody in ten years, is a serious issue.

SEN. ESP understood **SEN. BUTCHER'S** concern. He thought they had done a lot in this session and the previous session to address the 2nd, 3rd, and 4th time offender. This bill has fiscal implications that aren't fully understood. Next session they could look at those things. There was testimony those folks probably wouldn't be able to make bail, and the county has the responsibility of caring for those folks until trial. There was testimony the fines would cover this, but if a person is a functioning alcoholic at some level, he may or may not have the money to pay the fine. He thought the issue needs several more months of work and a new fiscal note. He wished to support the motion.

CHAIRMAN ZOOK said there is another issue that needs to be settled before this one--how to avoid having these people refuse to blow in the tube. If they don't, they can't be charged under this legislation. The extreme difference in fiscal notes is of concern. He would be uncomfortable sending this bill out thinking they had really solved something and spent a great deal of money doing it.

SEN. LAIBLE commented they had a bill to add 45 misdemeanor probation officers, and it was about the same amount of money. If people refused to blow, they would automatically be supervised. He thought that is something they could look at in the next session. Obviously, there is a problem here. As **Mr. Williams** commented, if they don't blow, it's a misdemeanor. There is nothing that can be done about that under law.

Vote: Motion carried 18-1 with **BUTCHER** voting no.

EXECUTIVE ACTION ON SB 483

SEN. COBB advised they didn't take final action on the bill. The amendment would change 90% to 95%. Right now, the departments have to give **Director Swysgood** a 5% cut list. His idea was to get rid of that cut list, and just go to 95%. The base is cut when they come in by 5%, and they would have to vote to add it back in. **SEN. KEENAN** indicated he had no problem with the amendment.

Motion: **SEN. KEENAN** moved that **SB 483 DO PASS**.

Motion: **SEN. COBB** moved that **SB048302.ATP BE ADOPTED**.
EXHIBIT(fcs81a13)

SEN. LAIBLE said he had a note that they struck Section 1 in it's entirety in a conceptual amendment. **CHAIRMAN ZOOK** confirmed that.

SEN. ESP said in **SEN. KEENAN'S** bill, base budget is defined in Section 2. In Amendment #4, it talks about a different process in preparing the budget.

SEN. COBB said they are striking the language on page 2, because that is existing law. Right now they have to give up to the budget office a 95% plan which most legislators never see. He thought they should get rid of current law and quit doing this. With **SEN. KEENAN'S** bill, they won't need two plans.

SEN. ESP said the section talks about how to prioritize things. He wondered if that would be a natural outcome of **SEN. KEENAN'S** bill.

SEN. COBB said right now, **SEN. KEENAN'S** bill would be a 10% cut anyway, and agencies still have to do this 5% plan. He thought they should just do one. He advised that **Clayton Schenck, Legislative Fiscal Analyst**, said the current law with the 5% isn't working.

CHAIRMAN ZOOK said the motivation behind the bill was the current law wasn't working that well.

SEN. COBB said he was just getting rid of current law, but was also changing the 10% to 5%.

Director Sysgood said the amendment inserts 17-7-111 language, and strikes the requirement for agencies to submit the 5% list to the budget office. Instead, the 10% would be taken from the base established by the previous legislature, and the amendment reduces that to 5% below the base.

SEN. COBB asked **Director Swysgood** if this is okay, because the old system isn't working. He wondered if it made any difference to **Director Swysgood**.

Director Swysgood indicated they would do what the legislature directs them to do. Their concern is what is the base.

SEN. KEENAN said he was fine with the amendment.

SEN. LAIBLE asked why the change from the 90% to 95%. There will still be a decision package to bring it up.

SEN. COBB said he was trying to be realistic. He thought they can get away with 5% cuts. With 10%, after awhile the committee just starts automatically putting it back in. He said they could leave it at 10% if they want.

Vote: Motion carried 18-1 with SEN. COONEY voting no.

Motion/Vote: SEN. KEENAN made a motion that HB 483 DO PASS AS AMENDED. Motion carried 18-1 with COONEY voting no.

EXECUTIVE ACTION ON HB 756

Motion: SEN. STONINGTON moved that HB 756 BE CONCURRED IN.

CHAIRMAN ZOOK said this is a duplication of money that has already been spent elsewhere by SEN. COBB.

SEN. LAIBLE advised he is not in favor of this program. When they are struggling with a budget, and adding more money into the CHIP program, and adding another \$10 million a year for the next two years to fund tobacco cessation programs, he didn't think they can stretch the money that far. It will have to come out someplace, and it's going to come out of DPHHS.

Substitute Motion: SEN. ESP moved that HB 756 BE INDEFINITELY POSTPONED.

SEN. MCCARTHY asked what's left in this bill.

SEN. STONINGTON advised the only part of this bill that is not funded in HB 2 already, is the **Comprehensive Health Association**. CHIP is funded. The work the subcommittee did, was to take I-146 as the voters passed it, and to say they want to as much as possible respect the voters opinion. They feel, for this biennium only, they can't fund the tobacco prevention program to the full extent. They took \$5.8 million in the first year and \$6 million in the second year, and that is in SB 485.

SEN. MCCARTHY asked if all that's left in this bill is \$761,000 per year. SEN. STONINGTON said that is correct. SEN. NELSON has agreed to carry an amendment that would appropriate that money in HB 2. The money is currently sitting in a special revenue account.

CHAIRMAN ZOOK said the **Comprehensive Health Insurance Program** is for those who have difficulty getting insurance.

SEN. STONINGTON was fairly sure the way the statute reads now, after the passage of I-146, {Tape: 6; Side: B} the 18% will be used to fund CHIP, the **Comprehensive Health Association**, and if SEN. COBB'S bill passes there is additional money to use for matching funds for Medicaid. There will be money for the MCHA out of that special revenue account, but it doesn't say how much.

Vote: Motion that HB 756 BE INDEFINITELY POSTPONED carried unanimously.

EXECUTIVE ACTION ON HB 206

Motion: SEN. ESP moved that HB 206 BE CONCURRED IN.

SEN. ESP advised the bill raised driver's license fees to fund retirement for the **Montana Highway Patrol**.

Motion: SEN. ESP moved that HB020702.ATP BE ADOPTED.
EXHIBIT (fcs81a14)

SEN. ESP advised the original bill had fees and percentages that he thought were too high and that raised too much money. The amendment lowers it. The amendment raises a little more for the counties and the general fund than current law. It keeps the retirement whole.

Vote: Motion carried unanimously.

Motion: SEN. ESP moved that HB 206 BE CONCURRED IN AS AMENDED.

SEN. SCHMIDT asked **Larry Fasbender**, Department of Justice to comment on the amendment.

Mr. Fasbender said all these are projections. They are comfortable with the numbers. It funds the retirement and puts a little more in the general fund. The percentages will work at the level in the amendment.

Vote: Motion carried unanimously.

EXECUTIVE ACTION ON HB 628

CHAIRMAN ESP advised this is the economic development bill of **REP. MONICA LINDEEN**. It statutorily appropriates funds and takes the a part of the money that was going into the **Treasure State Endowment Fund** and is no longer in there, and diverts it to this.

Motion/Vote: SEN. LAIBLE moved that HB 628 BE INDEFINITELY POSTPONED. Motion carried 15-4 with COONEY, MCCARTHY, SHEA and TESTER voting no.

Discussion:

SEN. TESTER thought this is a very small amount of money, and doesn't affect the general fund. He thought it might be money well spent.

SEN. ESP asked **SEN. TESTER** whether funding a program like this sets a bad precedent.

SEN. TESTER thought there has to be a reason to do something like this. His reason is there is a water compact coming up with the Blackfoot Tribe. If this would build some good will with the Tribe for the state, it might be money well spent. He thought education should be funded with education dollars, but that's the reason the bill got to this point.

SEN. TROPILA said they didn't qualify for cultural aesthetic grants, and that **REP. DAVE KASTEN** said they would try to find other funding to appease the tribe. It is one individual that does this program.

SEN. MCCARTHY asked if **Susan Cunningham, Compact Commission**, gave any testimony. **SEN. TROPILA** indicated no.

SEN. BALES said didn't think this is necessarily an appropriate way to go. He questioned whether or not it would make any difference as far as negotiating a water compact.

SEN. BUTCHER said his concern was taking hunter's and sportsmen's fees to do this. He thought that is a tax that needs to be protected.

Vote: Motion carried 14-5 with **COONEY, SCHMIDT, STONINGTON, TESTER, and TROPILA** voting no.

EXECUTIVE ACTION ON HB 19

CHAIRMAN ZOOK advised the bill had been indefinitely postponed. If they struck Subsection 2 on page 3, line 6, the bill would probably be okay.

Ms. Purdy advised the primary thing is the Legislature would no longer need a 2/3 vote to spend above the limitation. It would have to be segregated in the budget. On page 3, Section 3, the expenditure limitation statute would be redefined, and what the budget growth within those limitations would be. If the budget does not conform to the expenditure limitation, the general fund appropriations and transfers must be approved by a 2/3 vote.

That is what would be amended out of the bill. All proposed expenditures in excess of the limitation must be identified separately from the rest of the budget.

SEN. LAIBLE asked what would happen if the bill passed, and there was a situation where the population rates have risen, the inflation rates have risen, but the revenue source has increased.

Ms. Purdy advised when they meet as a legislature, they must pass a balanced budget. While the expenditure limitation puts an upper limit under certain circumstances without a super majority vote, they would still have to pass a budget that is in conformance with the revenue.

SEN. LAIBLE asked if this would be in conflict with **SB 483**.

Ms. Purdy indicated **SB 483** does not limit the legislature in any way on a budget they can pass. The only limitation is the amount of available revenue. **SB 483** sets a different starting benchmark. From thereon, they can appropriate to whatever priorities and level they wish within the confines of the available revenue.

SEN. ESP suggested they leave the bill where it is for now, and look at it in a day or so.

ADJOURNMENT

Adjournment: 5:00 P.M.

SEN. TOM ZOOK, Chairman

PRUDENCE GILDROY, Secretary

TZ/PG

EXHIBIT (fcs81aad)